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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,918	04/08/2004	Brian C. Case	1000-008	8766
42715	7590	11/02/2009		
BUCHANAN INTELLECTUAL PROPERTY OFFICE LLC				
P.O. BOX 700				
PERRYSBURG, OH 43552-0700				
EXAMINER				
PREBILIC, PAUL B				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
11/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/820,918

**Applicant(s)**

CASE ET AL.

**Examiner**

Paul B. Prebille

**Art Unit**

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-16, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) 4-9, 12, 15, 30 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 10, 11, 13, 14 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### ***Election/Restrictions***

Claims 4-9, 12, 15, and 30-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 31, 2007.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities:

In claim 1, on lines 2-8, the setting forth that the struts are interconnected by bends (see lines 2-3) followed by setting forth that the struts comprise bends (lines 3-8) is confusing in view of the invention as disclosed. The Examiner suggests deleting the language "interconnected by bends" in order to overcome this objection.

In claim 1, on lines 9-10, "the inner and outer surfaces" lack clear antecedent basis. The Examiner suggests deleting "the" in order to overcome this objection.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Chuter et al (US 2003/0176912). Chuter anticipates the claim language where the expandable support frame as claimed is the stent (40) of Chuter, the plurality of struts as claimed are in the stent, the at least one of the struts as claimed is best shown in Figure 1S, the first portion as claimed is bottom of the eyelet (41), the second and third portions are the left and right sides of the eyelet (41) that are clearly shown as having a larger width, the graft member as claimed is the graft material (30) where its edge is in indirect contact with the edge, and the at least one attachment element as claimed are the sutures (148); see Figures 1P to 1S and paragraphs [0096] to [0098].

***Claim Rejections - 35 USC § 103***

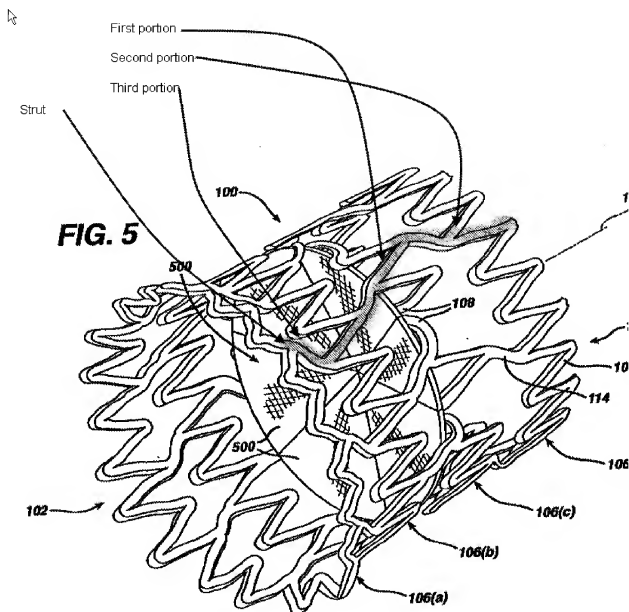
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 10, 11, 13, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duerig et al (US 2002/0138135) in view of Pavcnik (WO 99/62431). Duerig meets the claim language where the expandable support material is the stent (100) of Duerig, the at least one of the struts is shown in annotated Figure 5 below, the first portion is at W2 that is disclosed as being narrower than W1 at the bend (see paragraph [0040]), the graft as claimed is one or more of the flaps (602) of Duerig, and the at least one attachment elements are the sutures used to attach the flap (602) to the stent (see paragraph [0049]). However, Duerig fails to disclose sutures that go through

the thickness of the support member as claimed. Pavcnik teaches that it was known to the same art to attach very similar graft materials by extending sutures through the graft material and around the struts; see the figures thereof. Therefore, it would have been considered *prima facie* obvious to an ordinary artisan to attach the sutures of Duerig in the manner disclosed by Pavcnik because it is a mere combination of known elements to yield a predictable result; see MPEP 2143.

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With regard to claims 10 and 11, Duerig fails to teach the use of extracellular matrix material as claimed. However, Pavcnik teaches that collagen and small intestinal submucosa were known and used in similar devices; see page 7, line 30 to page 8, line 3. Therefore, it would have been obvious to utilize extracellular matrix material in the Duerig device for the same reasons that Pavcnik utilizes the same. Additionally, it is a combination of known elements to yield a predictable result.

***Allowable Subject Matter***

The Examiner suggests making the following changes to put the claims in condition for allowance:

- (1). Make the changes suggested to overcome the claim objections *supra*.
- (2). In claim 1, on lines 4 and 6 and in the specification at an appropriate location, change "serpentine" to ---undulating--- in the place thereof.
- (3). In claim 1, on line 4 and in the specification at an appropriate location, after "path", insert the language ----forming an annular structure and----.
- (4). In claim 1, on line 9, change "member" to ---sheet---.
- (5). In claim 1, on lines 10 and 18, before "contact", insert the word ---direct---.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilio whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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